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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,515	08/11/1999	ROBERT PAUL BLACK	THOM-0007	6283

7590

04/11/2002

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 04/11/2002

13

Please find below and/or attached an Office communication concerning this application or proceeding.

MF=3

# Office Action Summary

Application No.

89/308515

Applicant(s)

Black

Examiner

John Guarrie/10

Group Art Unit

1791

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 11/28/2001
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-12 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-12 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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### **DETAILED ACTION**

15. The Examiner acknowledges paper # 12, of 11/28/2001, the spe examiner interview summary, which indicated the final rejection of 8/29/2001 would be withdrawn and prosecution would continue. The amendment submitted 10/10/2001 has been entered, claims 13-17 have been cancelled, the pending claims are 1-12, with new independent claims 11 and 12.

16. Applicant's request for reconsideration of the finality of the rejection of the last Office action per Interview Summary with spe on 11/28/2001 is persuasive and, therefore, the finality of that action, 8/29/2001, is withdrawn.

17. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

18. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 1, it is not clear if the phrase "comprising one of a padding, a stuffing, and a filling material" is a Markush group. Markush groups are usually expressed as : **selected from the group consisting of.**

*Claim Rejections - 35 USC § 102*

19. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 11, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Brooks 5,532,050.

Brooks describes non-woven fibrous batting (which is similar to the claimed padding, stuffing, or a filling material), which is a mixture of two kinds of synthetic fibers, (column 1, lines 5-8). Brooks describes the

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densified batting can be used for cushions, mattresses and pads, (column 1, lines 12-13). Brooks describes the fibers can be polyester and cellulose, (column 3, lines 15-23). Brooks describes the polyester is polyethylene terephthalate, (column 3, lines 24-25). It is the Examiner's position that the patentability of a product does not depend on its method (spinning) of production. If the product in the product-by-process claim is the same or is obvious from a product of the prior art, the claim is unpatentable even though the product was made by a different process, **In re Thorpe, 227 USPQ 964, 966 (Fed. Cir. 1985)**. The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. Brooks describes the essential limitations of the claimed invention. Claims lack novelty.

***Claim Rejections - 35 USC § 103***

20. Claims 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP-08-170224 in view of GB 1486 639.

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JP'224 describes a biconstituent fiber (which can be considered a blend or mixture and can be considered conjugate) of a disperse dye polymer with cellulosic fibers (which can be saw tooth crimped) which are spun from an organic solvent system (like a non-woven fiber), (see abstract). JP'224 describes the biconstituent fiber (like a blend) can be a polyester, like polyethylene terephthalate, sulphonic acid-modified polyethylene terephthalate or polybutylene terephthalate, (page 3, column 1, lines 11-15 of the JP'224 document, as noted by an oral translation by Japanese translator), further noted on page 1, lines 19-27 in GB 2324 064 which cites the abstract to JP-8-170224. JP'224 describes the spinning process, (see abstract). JP'224 describes the cellulosic polymer type of which lyocell is known as a generic term for solvent spun cellulose polymer. JP'224 describes 2-45% by weight of the cellulose type polymer, (see cite in GB 2324 064, page 1, lines 24-25). JP'224 differs from the claimed invention because it is silent about the amount of cellulosic fiber being as high as 80% by weight and utility for bedding and clothing articles.

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GB'639 describes non-woven fabrics of regenerated cellulose with polyester which can be used in the clothing industry, (page 1, column 1, lines 17-36; column 2, lines 44-59). GB'639 describes utility in the clothing industry, (page 2, column 1, lines 21-25). GB'639 describes 60% polyester fibres, and 30% regenerated cellulose, (see Example 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fibers of JP'224 with the non-woven fabric of GB'639 motivated with the expectation that the clothing properties of crimp would be improved. It would be obvious to one of ordinary skill in the art to optimize the amount of the cellulosic fiber for cost and utility considerations. Regarding the bedding, it would have been obvious to one of ordinary skill to optimize the fabric properties for bedding since there is no defined structure for the fabric.

21. Applicant's arguments have been considered but are not germane with the new grounds of rejection.

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22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is (703) 308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-3209. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
John J. Guarriello:gj

Patent Examiner

March 28, 2002

  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
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